

CASE NO. 18-cv-00105 LG RHW  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI

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IN RE: ALLIANCE CONSULTING GROUP, LLC,  
*Debtor.*

PLANT MATERIALS, LLC,  
*Appellant,*

v.

ALLIANCE CONSULTING GROUP, LLC, *et al.*,  
*Appellees.*

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APPELLEES' REQUEST FOR JUDICIAL NOTICE

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Appellees<sup>1</sup> Richard W. Cryer and Drying Facility Assets Holding, LLC respectfully request that this Court take judicial notice, pursuant to Federal Rule of Evidence 201, of *Plaintiff's First Amended Original Petition* filed by Appellant Plant Materials, LLC on August 2, 2018, in the District Court, 150<sup>th</sup> Judicial District in Bexar County, Texas, captioned Plant Materials, LLC v. Southton Rail Yard, LLC, et al., Cause No. 2018 CI 11815 (the "State Court Petition"). The State Court Petition was filed after the Appellees filed their Brief. A true and correct copy of the State Court Petition is attached hereto as Exhibit 1.

The State Court Petition is relevant for the pending Appeal for three reasons. *First*, Appellant states that it was made aware of a potential sale of the Debtor's Drying Facility in Picayune, Mississippi sometime between May 2014 – September 2014 when Appellant was performing work under its contract with Shale Support Services, LLC ("S3"). *See* State Court Petition ¶ 31.

*Second*, Appellant states that it did not take any legal action to recover the unpaid balance under its contract with S3 because of a purported promise to receive additional work on the Southton Rail Yard project in San Antonio, Texas. *See* State Court Petition ¶ 32. The purported promise was made by the named defendants in the State Court Action, not the Appellees. *See* State Court Petition ¶ 45.

*Finally*, in the Texas state court action, Appellant is seeking to recover from S3, Southton Rail Yard, LLC, Shale Support Holdings, LLC and their principals the same fees and costs it seeks to recover from Appellee DFAH and the Debtor's estate

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<sup>1</sup> All otherwise undefined terms in this Request for Judicial Notice have the meanings set forth in Appellees' Brief [Docket No. 14].

if the Motion to Reopen is granted. *See* State Court Petition ¶¶ 3-8, 34-75.

The State Court Petition is properly the subject of judicial notice pursuant to Federal Rule of Evidence 201(b), which provides that a court may take judicial notice of a fact “not subject to reasonable dispute because . . . [it] can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Further, Federal Rule of Evidence 201(c) provides that the court “must take judicial notice if a party requests it and the court is supplied with the necessary information.”

Therefore, Appellees respectfully request that this Court take judicial notice of the State Court Petition attached hereto as Exhibit 1.

THIS, the 27th day of August, 2018.

Respectfully submitted,

/s/ David A. Wheeler

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### **CERTIFICATE OF SERVICE**

I hereby certify that on August 27, 2018, I electronically filed the foregoing with the Clerk of Court using CM/ECF, which sent notification of such filing to the party list below:

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